

**Introduced by Senator Speier**

February 7, 2005

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~~An act to add Section 4051.1 to the Business and Professions Code, relating to pharmacy.~~ *An act to add, repeal, and add Section 11100.02 of the Health and Safety Code, relating to controlled substances.*

LEGISLATIVE COUNSEL'S DIGEST

SB 152, as amended, Speier. Pseudoephedrine.

*Under existing law, a retailer who makes an over-the-counter retail sale of pseudoephedrine is generally subject to a 3-package per transaction limitation or 9-gram per transaction limitation. Any violation of this requirement is a crime.*

*This bill would impose additional requirements on the sale by a pharmacist or retail distributor, as defined, of a product, except as specified, containing any amount of pseudoephedrine or its salts or isomers or the salts of isomers of pseudoephedrine. The bill would, effective June 1, 2006, require the purchaser of the product to present a government-issued photo identification and would require that a retail distributor's staff complete certain training before selling the product. The bill would add to these requirements, effective January 1, 2008, a provision that the pharmacist and retail distributor maintain a record of the sales of the product and limit sales to a single purchaser to 3 packages or 9 grams within a 30-day period.*

*Because the bill would make a violation of these provisions a crime, it would impose a state-mandated local program.*

~~Existing law, the Pharmacy Law, provides for the licensure and regulation of pharmacies and pharmacists by the California State Board of Pharmacy. That law authorizes a pharmacist to furnish and~~

~~dispense prescription drugs. A knowing violation of the Pharmacy Law is a misdemeanor.~~

~~This bill would prohibit, subject to specified exceptions, the furnishing of a product containing pseudoephedrine by other than a pharmacist or pharmacy technician in a pharmacy. The bill would limit the amount of the product that a person could acquire in a 30-day period and would impose requirements on acquisition.~~

~~Because the bill would specify additional requirements under the Pharmacy Law, the violation of which is a crime, it would impose a state-mandated local program.~~

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

*The people of the State of California do enact as follows:*

- 1     ~~SECTION 1. Section 4051.1 is added to the Business and~~
- 2     ~~Professions Code, to read:~~
- 3     ~~SECTION 1. Section 11100.02 is added to the Health and~~
- 4     ~~Safety Code, to read:~~
- 5     ~~11100.02. (a) A pharmacist and a retail distributor, as~~
- 6     ~~defined in paragraph (5) of subdivision (h) of Section 11100,~~
- 7     ~~shall store products containing any amount of pseudoephedrine~~
- 8     ~~or the salts, isomers, or salts of isomers of pseudoephedrine in a~~
- 9     ~~locked area.~~
- 10    ~~(b) A pharmacy and a retail distributor shall not sell a product~~
- 11    ~~described in subdivision (a) to a purchaser unless the purchaser~~
- 12    ~~presents a valid, current identification that contains a photo of~~
- 13    ~~himself or herself and that was issued by a governmental agency.~~
- 14    ~~(c) No staff member of a retail distributor may sell a product~~
- 15    ~~described in subdivision (a) unless the staff member has received~~
- 16    ~~training in both of the following subjects:~~
- 17    ~~(1) Identification of pseudoephedrine products.~~
- 18    ~~(2) Usage of pseudoephedrine in manufacturing~~
- 19    ~~methamphetamine.~~

1     (d) This section shall not apply to either of the following:

2     (1) A compound, mixture, or preparation of pseudoephedrine  
3     that is in liquid, liquid capsule, or gel capsule form if  
4     pseudoephedrine is not the only active ingredient. "Gel capsule"  
5     means any soft gelatin, liquid-filled capsule that contains a liquid  
6     suspension in a matrix of glycerine, polyethylene glycol,  
7     propylene glycol, and other liquid substances. Regardless of the  
8     product manufacturer's labeling, a gelatin covered solid is not a  
9     gel capsule for purposes of this subdivision.

10    (2) A pediatric liquid, as defined in paragraph (4) of  
11    subdivision (h) of Section 11100.

12    (e) A first violation of this provision is a misdemeanor. A  
13    person who has previously been convicted of a violation of this  
14    section shall, upon a subsequent conviction thereof, be punished  
15    by imprisonment in a county jail not exceeding one year, by a  
16    fine not exceeding ten thousand dollars (\$10,000), or by both the  
17    fine and imprisonment.

18    (f) This section shall become operative on June 1, 2006, and  
19    shall remain in effect only until January 1, 2008, and as of that  
20    date is repealed, unless a later enacted statute, that is enacted  
21    before January 1, 2008, deletes or extends that date.

22    SEC. 2. Section 11100.02 is added to the Health and Safety  
23    Code, to read:

24    11100.02. (a) A pharmacist and a retail distributor, as  
25    defined in paragraph (5) of subdivision (h) of Section 11100,  
26    shall store products containing any amount of pseudoephedrine  
27    or the salts, isomers, or salts of isomers of pseudoephedrine in a  
28    locked area.

29    (b) A pharmacy and a retail distributor shall not sell a product  
30    described in subdivision (a) to a purchaser unless the purchaser  
31    presents a valid, current identification that contains a photo of  
32    himself or herself and that was issued by a governmental agency.

33    (c) (1) Before selling a product described in subdivision (a) to  
34    a purchaser, the pharmacist or retail distributor shall record the  
35    following information:

36    (A) The date of purchase.

37    (B) The name and address of the purchaser.

38    (C) The number of the identification presented by the  
39    purchaser.

1 (D) The name and amount of the product, as described in  
2 subdivision(a), that was purchased.

3 (2) The pharmacy and retail distributor shall maintain the  
4 record described in paragraph (1) for at least three years from  
5 the product's date of purchase in an electronic format approved  
6 by the Attorney General.

7 (d) (1) A pharmacist or a retail distributor shall not sell more  
8 than three packages or more than nine grams of the product  
9 described in subdivision (a) within any 30-day period to a single  
10 purchaser.

11 (2) A pharmacist and a retail distributor shall develop a  
12 system that notifies the pharmacist or retail distributor that the  
13 limitation described in paragraph (1) has been reached.

14 (e) No staff member of a retail distributor may sell a product  
15 described in subdivision (a) unless the staff member has received  
16 training in both of the following subjects:

17 (1) Identification of pseudoephedrine products.

18 (2) Usage of pseudoephedrine in manufacturing  
19 methamphetamine.

20 (f) This section shall not apply to either of the following:

21 (1) A compound, mixture, or preparation of pseudoephedrine  
22 that is in liquid, liquid capsule, or gel capsule form if  
23 pseudoephedrine is not the only active ingredient. "Gel capsule"  
24 means any soft gelatin, liquid-filled capsule that contains a liquid  
25 suspension in a matrix of glycerine, polyethylene glycol,  
26 propylene glycol, and other liquid substances. Regardless of the  
27 product manufacturer's labeling, a gelatin covered solid is not a  
28 gel capsule for purposes of this subdivision.

29 (2) A pediatric liquid, as defined in paragraph (4) of  
30 subdivision (h) of Section 11100.

31 (g) A first violation of this provision is a misdemeanor. A  
32 person who has previously been convicted of a violation of this  
33 section shall, upon a subsequent conviction thereof, be punished  
34 by imprisonment in a county jail not exceeding one year, by a  
35 fine not exceeding ten thousand dollars (\$10,000), or by both the  
36 fine and imprisonment.

37 (h) This section shall become operative on January 1, 2008.

38 SEC. 3. No reimbursement is required by this act pursuant to  
39 Section 6 of Article XIII B of the California Constitution because  
40 the only costs that may be incurred by a local agency or school

*district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.*

~~4051.1. (a) A product containing any amount of pseudoephedrine or the salts, isomers, or salts of isomers of pseudoephedrine shall be furnished only by a pharmacist or pharmacy technician in a pharmacy.~~

~~(b) Notwithstanding Section 11100 of the Health and Safety Code, no person shall purchase, receive, or otherwise acquire more than nine grams of the product described in subdivision (a) within any 30-day period. Before purchasing, receiving, or otherwise acquiring a product described in subdivision (a), a person shall produce a valid California driver's license or other valid identification containing a photograph of the person and showing his or her date of birth. The person shall sign a written document, as specified by the Attorney General, indicating the date of the purchase, receipt, or acquisition and the amount of the product involved in the transaction.~~

~~(c) The pharmacist shall store the product described in subdivision (a) in a locked area within the view of the pharmacist. The pharmacist and all persons with access to the locked storage area shall prevent the theft or diversion of the product.~~

~~(d) (1) This section shall not apply to a compound, mixture, or preparation of pseudoephedrine that is in liquid, liquid capsule, or gel capsule form if pseudoephedrine is not the only active ingredient. "Gel capsule" means any soft gelatin, liquid-filled capsule that contains a liquid suspension in a matrix of glycerine, polyethylene glycol, propylene glycol, and other liquid substances. "Active ingredient" includes the matrix found in liquid capsules. Regardless of the product manufacturer's labeling, a gelatin-covered solid is a gel capsule for purposes of this subdivision.~~

~~(2) The exception in paragraph (1) shall not apply to a liquid preparation that is discovered in an illegal laboratory, that is associated with an illegal laboratory, or that is any form other~~

1 ~~than one manufactured and sold by a manufacturer for medicinal~~  
2 ~~purposes.~~

3 ~~(e) This section does not apply to a substance furnished~~  
4 ~~pursuant to a valid prescription.~~

5 ~~SEC. 2. No reimbursement is required by this act pursuant to~~  
6 ~~Section 6 of Article XIII B of the California Constitution because~~  
7 ~~the only costs that may be incurred by a local agency or school~~  
8 ~~district will be incurred because this act creates a new crime or~~  
9 ~~infraction, eliminates a crime or infraction, or changes the~~  
10 ~~penalty for a crime or infraction, within the meaning of Section~~  
11 ~~17556 of the Government Code, or changes the definition of a~~  
12 ~~crime within the meaning of Section 6 of Article XIII B of the~~  
13 ~~California Constitution.~~